

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

VAN PHI,

§

Plaintiff,

CIVIL ACTION NO.

VS.

28

CARTER PRATHER AND ASPHALT &
FUEL TRANSPORT, LLC D/B/A AF
TRANSPORT,

§

Defendants,

8

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1446(a), Defendant Asphalt & Fuel Transport, LLC d/b/a AF Transport (“AF Transport”) files this Notice of Removal, hereby removing this action from the 193rd Judicial District Court of Dallas County, Texas to the United States District Court for the Northern District of Texas, Dallas Division. Removal is based on diversity jurisdiction, because there is complete diversity between Van Phi (“Plaintiff”), and Defendants AF Transport and Carter Prather (“Prather”) and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff is a Texas resident. Defendants are not Texas residents. Defendant AF Transport is not a Texas corporation, but is an Oklahoma corporation organized and incorporated under the laws of the state of Oklahoma. Defendant Prather is a resident of Oklahoma.

I. INTRODUCTION

1. Plaintiff filed his Original Petition on December 1, 2020 in the 193rd Judicial District Court for Dallas County, Texas, located at 600 Commerce Street, Dallas, Texas 75202. Plaintiff's Original Petition asserts several causes of action against Defendants arising out of an alleged motor vehicle accident for which Plaintiff seeks damages greater than \$250,000 but less than \$1,000,000.

2. Plaintiff served Defendant Prather on December 11, 2020. See Exhibit F. Plaintiff served Defendant AF Transport through the Texas Secretary of State. The Texas Secretary of State received the Citation and Petition on behalf of AF Transport on December 15, 2020. See Exhibit 4. This Notice of Removal is being filed within thirty (30) days of service of the Citations and Original Petition on Defendants and is thus timely under 28 U.S.C. §1446(b).

II.
GROUNDS FOR REMOVAL

3. Federal diversity jurisdiction exists over this removed action pursuant to 28 U.S.C. § 1331, because all relevant parties are diverse and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

A. There Is Complete Diversity Among the Parties.

4. Removal is proper, because there is complete diversity between the parties. *See* 28 U.S.C. § 1332(a).

5. Plaintiff is a resident of Texas.

6. Defendant AF Transport is an Oklahoma corporation organized and incorporated under the laws of the state of Oklahoma. Consequently, AF Transport is a citizen of the State of Oklahoma for purposes of diversity jurisdiction.

7. Defendant Prather is an individual residing in Oklahoma. Consequently, Defendant Prather is a citizen of the State of Oklahoma for purposes of diversity jurisdiction.

B. The Amount In Controversy Exceeds \$75,000.

8. Plaintiff's Original Petition seeks a total amount greater than \$250,000 but less than \$1,000,000. The damages claimed exceed the \$75,000 jurisdictional threshold. In this regard, the damages Plaintiff claims in his petition, if claimed in good faith, are controlling. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938).

III.
VENUE

9. Venue for removal proper in this district and division under 28 U.S.C. § 1441(a), because this district and division embrace the Texas State District Courts of Dallas County, Texas, the forum in which the removed action was previously pending.

**IV.
PROCEDURAL REQUIREMENTS**

10. Pursuant to 28 U.S.C. §1446(a) and Northern District of Texas Local Rule LR 81.1, the Notice of Removal has the following attachments:

- Exhibit 1: The completed civil cover sheet (and attached supplement)
- Exhibit 2: The supplemental civil cover sheet (and attached supplement);
- Exhibit 3: An index of all documents that clearly identifies each document and indicates the date the document was filed in state court;
- Exhibits A–H: Each document filed in the state court action excluding discovery material;
- Exhibit 4: Texas Secretary of State confirmation of receipt of service for Asphalt & Fuel Transport, LLC d/b/a AF Transport;
- Exhibit 5: Certificate of Interested Persons that complies with LR 3.1(c) or 3.2(e).

11. Pursuant to 28 U.S.C. § 1446(d), written notices of filing of this Notice of Removal will be given to all adverse parties promptly after the filing of same.

12. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the District Clerk for the 193rd Judicial District Court of Dallas County, Texas promptly after filing of same.

**V.
CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Defendant Asphalt & Fuel Transport LLC d/b/a AF Transport respectfully requests that the above-captioned action now pending in the 193rd Judicial District Court of Dallas County, Texas be removed to the United States District Court for the Northern District of Texas, Dallas Division.

Respectfully Submitted,

/s/ Kurt W. Meaders

KURT W. MEADERS
State Bar No. 13879900
RAYMOND B. ALBERTSON
State Bar No. 00971600
MEADERS & ALFARO
ATTORNEYS AT LAW
2001 Bryan Street, Suite 3625
Dallas, TX 75201-3068
Telephone: (214) 721-6210
Facsimile: (214) 721-6289
Eservice: Efiling@meaderslaw.com

ATTORNEYS FOR DEFENDANTS
CARTER PRATHER AND ASPHALT & FUEL
TRANSPORT, LLC D/B/A AF TRANSPORT

CERTIFICATE OF SERVICE

I hereby certify that on 8 January 2021, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Northern District of Texas, using the CM/ECF system, which will send notification of such filing to the following and I have separately sent such notification to the below:

James Bauguss III
State Bar No. 24045463
Ben Abbott & Associates, PLLC
1934 Pendleton Drive
Garland, TX 75041
Telephone: (972) 263-5555
Facsimile: (972) 682-7586
Eservice: Eservice@benabbott.com

/s/ Kurt W. Meaders

KURT W. MEADERS

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Van Phi

(b) County of Residence of First Listed Plaintiff Dallas County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See Supplement

DEFENDANTS

See Supplement

County of Residence of First Listed Defendant Tulsa County
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

See Supplement

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
<input checked="" type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input checked="" type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice			<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:		<input type="checkbox"/> 861 HIA (1395f)
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee		<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence		<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 871 IRS—Third Party
		<input type="checkbox"/> 550 Civil Rights		26 USC 7609
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
Click here for: Nature of Suit Code Descriptions.				

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|--------------------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> 1 Original Proceeding | <input checked="" type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------|---------------------------------------------------|--------------------------------------------------------------|----------------------------------------------------------------|-------------------------------------------------------------------|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332(a)**VI. CAUSE OF ACTION**Brief description of cause:
Auto Accident -- Diversity**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

01/08/21

/s/ Raymond B. Albertson

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

Exhibit 2

**Supplemental Civil Cover Sheet for Cases Removed
From State Court**

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

<u>Court</u>	<u>Case Number</u>
193rd Judicial District, Dallas County, TX	DC-20-17766

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

<u>Party and Party Type</u>	<u>Attorney(s)</u>
See Supplement	

3. Jury Demand:

Was a Jury Demand made in State Court? Yes

No

If "Yes," by which party and on what date?

Party

Date

4. Answer:

Was an Answer made in State Court? Yes No

If "Yes," by which party and on what date?

Both Defendants _____ 01/08/21 _____
Party Date

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason(s) for No Service</u>
N/A	

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate any changes from the style on the State Court papers and the reason for that change:

<u>Party</u>	<u>Reason</u>
N/A	

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claim(s)</u>
Plaintiff	Negligence, Respondeat Superior

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

VAN PHI,

Plaintiff,

vs.

CARTER PRATHER AND ASPHALT &
FUEL TRANSPORT, LLC D/B/A AF
TRANSPORT,

Defendants,

§§§§§§§§§§§§
CIVIL ACTION NO.

SUPPLEMENT TO FEDERAL SUPPLEMENTAL CIVIL COVER SHEET

2. Style of the Case:

<u>Party and Party Type</u>	<u>Attorney(s)</u>
Van Phi – Plaintiff	James Bauguss III State Bar No. 24045463 Ben Abbott & Associates, PLLC 1934 Pendleton Drive Garland, TX 75041 Telephone: (972) 263-5555
Carter Prather – Defendant	Raymond B. Albertson State Bar No. 00971600 Meaders & Alfaro Attorneys at Law 2001 Bryan Street, Suite 3625 Dallas, TX 75201-3068 Telephone: (214) 721-6210
Asphalt & Fuel Transport, LLC d/b/a AF Transport – Defendant	Raymond B. Albertson State Bar No. 00971600 Meaders & Alfaro Attorneys at Law 2001 Bryan Street, Suite 3625 Dallas, TX 75201-3068 Telephone: (214) 721-6210

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

VAN PHI,

Plaintiff,

vs.

CARTER PRATHER AND ASPHALT &
FUEL TRANSPORT, LLC D/B/A AF
TRANSPORT,

Defendants,

§§§§§§§§§§§§
CIVIL ACTION NO.

INDEX OF MATTERS BEING FILED

Exhibit Name of Document

- A. Certified Copy of Civil Docket Sheet from January 8, 2021;
- B. Copy of Plaintiff's Original Petition and Request for Disclosure filed on December 1, 2020;
- C. Copy of letter to court filed by Plaintiff's counsel on December 1, 2020, requesting citations to be issued;
- D. Copy of Citation issued to Defendant Carter Prather, filed on December 1, 2020;
- E. Copy of Citation issued to Defendant Asphalt & Fuel Transport, LLC d/b/a AF Transport, filed on December 1, 2020;
- F. Copy of Return of Service for Defendant Carter Prather filed on December 15, 2020;
- G. Copy of Notice of Initial Dismissal Hearing filed by Judge Whitmore on December 4, 2020;
- H. Copy of Defendants Carter Prather and Asphalt & Fuel Transport, LLC d/b/a AF Transport's Original Answer filed on January 8, 2021.

Exhibit 4



Texas Secretary of State

Ruth R. Hughs

Service of Process Search

Service #	Defendant	Style	Cause #

Found: 1 Displayed: 1

Service #: **2021323688** Received 12/15/2020 8:58:30 AM Cause #: **DC2017766**

Style: **VAN PHI VS CARTER PRATHER, ET AL**

Court: **193rd Judicial District Court Of Dallas County, Texas**

Service Action #1 Forwarded 12/21/2020 Return Receipt Dated 12/28/2020

Defendant Name: **ASPHALT & FUEL TRANSPORT LLC DBA AF TRANSPORT**

Result: **bearing signature**

- SOSDirect - Business Filings
- Business Copies and Certificates
- Uniform Commercial Code
- Texas Businesses Against Trafficking
- Texas.gov
- VoteTexas.gov - Voter Information
- Register to Vote & Voter I.D.
- Website Policies
- Open Records
- Contact us

- Statewide Search
- Texas Homeland Security
- Where the Money Goes
- Fraud Reporting
- Texas Veterans Portal



Exhibit 5

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Van Phi

Plaintiff

v.

DC-20-17766

Civil Action No.

Prather and Asphalt & Fuel Transport, LLC

Defendant

CERTIFICATE OF INTERESTED PERSONS

(This form also satisfies Fed. R. Civ. P. 7.1)

Pursuant to Fed. R. Civ. P. 7.1 and LR 3.1(c), LR 3.2(e), LR 7.4, LR 81.1(a)(4)(D), and LR 81.2,
Asphalt & Fuel Transport, LLC d/b/a AF Transport

provides the following information:

For a nongovernmental corporate party, the name(s) of its parent corporation and any publicly held corporation that owns 10% or more of its stock (if none, state "None"):

***Please separate names with a comma. Only text visible within box will print.**

None

A complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent or subsidiary corporations, or other legal entities that are financially interested in the outcome of the case:

***Please separate names with a comma. Only text visible within box will print.**

ACE American Insurance Company

Date: 01/08/21
Signature: /s/ Raymond B. Albertson
Print Name: Raymond B. Albertson
Bar Number: 00971600
Address: 2001 Bryan Street, Suite 3625
City, State, Zip: Dallas, TX 75201
Telephone: (214) 721-6210
Fax: (214) 721-6289
E-Mail: Efiling@meaderslaw.com